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## Senate Task Force on Family Relations Court - Final Report - November 1990

Senate Task Force on Family Relations Court

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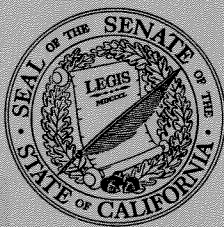
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SENATE TASK FORCE  
ON  
FAMILY RELATIONS COURT

FINAL REPORT

NOVEMBER 1990



Prepared by:  
**Senate Task Force on Family Relations Court**  
Senator Bill Lockyer, Co-Chairperson  
Justice Donald B. King, Co-Chairperson

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## California State Senate

### TASK FORCE ON FAMILY RELATIONS COURT

SENATOR BILL LOCKYER

CO-CHAIR

JUSTICE DONALD KING

CO-CHAIR

TASK FORCE ADDRESS  
SENATE OFFICE OF RESEARCH  
1100 J STREET, SUITE 650  
SACRAMENTO, CA 95814  
(916) 445-1727  
ATSS 8-485-1727  
REBECCA GONZALES  
STAFF DIRECTOR  
(916) 445-1727  
JEAN HURTADO  
SECRETARY  
(916) 445-1727

November 1990

Hon. David Roberti  
Chairperson  
Senate Committee on Rules

Hon. Malcolm M. Lucas  
Chairperson  
Judicial Council of California

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The Senate of the State of California created its Task Force on a Family Relations Court to consider implementation of and to report to the Senate and the Judicial Council about the recommendations of the Final Report of the Attorney General's Child Victim Witness Judicial Advisory Committee.

A special focus of the Task Force was the recommendation to create a Family Relations Division within each Superior Court with coequal status with the present Civil and Criminal Divisions. After considerable study, including four public hearings throughout California, the Task Force recommends against mandating the creation of a Family Relations Division of the Superior Court for the reasons set forth in this report. Although we strongly believe that courts handling the legal issues affecting the family must have coequal status with Civil and Criminal Divisions, the incredible overload on family courts has those courts on the brink of collapse. Their enormous and difficult caseloads are presently being handled only because of the high degree of specialization and expertise of the judicial officers in those assignments and, in marital dissolutions calendars, by significant amounts of volunteer judicial assistance from the private family law bar.

Despite recommending against the creation of a Family Relations Division within the Superior Court, the Task Force recommends that the pilot projects, which have been approved by the Legislature and are currently being developed by the Judicial Council, including the formation of a Family Relations Division, should go forward to test the recommendations of the Attorney General's Advisory Committee and to provide an opportunity for the issues and concerns raised at our public hearings to be addressed.

The Senate Task Force on a Family Relations Court has been blessed with a very diligent, thoughtful, concerned and hard-working membership. We are particularly pleased that the recommendations contained in this report represent the unanimous views of the members of the Task Force.

Even the most casual reader of daily newspapers is fully aware of the strain at every level of government on public financial resources to meet the obligations of government in California. Nonetheless, the Task Force was shocked and dismayed at the inadequacy of the resources allocated to the judicial system and adjunct services agencies to meet the needs of our state's most precious resource, its families. The importance of the family and of allocation of governmental resources to meet the legitimate needs of the family in California is, all too often, only rhetoric. California's failure to meet the initial needs of families in trouble is not only tragic, it is foolish and costly. Unmet initial needs of families often ripen into problems requiring much greater expenditures of funds for mental health services, substance abuse and criminal behavior.

The Task Force has found that there is a crisis in the California Family Court System, including its social service adjunct parts. A primary cause is the inadequate allocation of public resources to permit family courts to provide the services and meet the reasonable and legitimate needs of California's families. Thus, the Task Force calls upon the Legislature and county boards of supervisors, in their funding of the courts, to consider allocating additional resources to provide the services to meet reasonable family needs. When it comes to the needs of families, there is much to be said for the old adage: an ounce of prevention is worth a pound of cure.

Although the Task Force does not recommend the creation of a Family Relations Division within the Superior Court, it does make many other recommendations which will improve the operation of family courts in California.

We submit this report to the Senate Committee on Rules and the Judicial Council with the hope that each of the Task Force's recommendations will be implemented so that our family courts may better serve the urgent needs of the families of this state.

SENATOR BILL LOCKYER, Co-chairperson  
JUSTICE DONALD B. KING, Co-chairperson

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## **EXECUTIVE SUMMARY**

This is the final report of the Senate Task Force on Family Relations Court. The Task Force was created to study and analyze the structure of the Superior Court, and to develop recommendations for revisions of the existing court system to the Judicial Council and the Senate Committee on Rules.

### **Mission Statement**

**Child and family related proceedings are distinctively different from other legal proceedings. Our mission is to improve the manner in which the courts dispense justice, facilitate resolution of conflicts and insure the provision of services to the children and families who come before them.**

**One essential aspect of this mission is the coordination of the various components of the legal process. The Task Force recognizes the necessity of having broad participation of the executive and legislative branches of government, state court leadership, legal and social services personnel, consumers, and interested public members. Therefore, the Task Force considered the impact of court intervention on all affected parties to be the central concern of its recommendations.**

### **Creation of a Family Relations Division**

The creation of a Family Relations Division was a proposed revision to the existing court structure developed and recommended by the Attorney General's Child Victim Witness Judicial Advisory Committee. It was developed to respond to problems which arise when families are involved in more than one court system. This proposal would have grouped all civil actions dealing with children, family and human relations within one division which would have coequal status with the present Civil and Criminal Divisions in the Superior Court.

The Senate Task Force on the Family Relations Court finds that the problem of families involved in multiple courts and receiving conflicting orders, as identified by the Attorney General's Advisory Committee on Child Victim Witnesses, does not occur in a sufficient number of cases to warrant a total restructuring of the Superior Court. Although there were cases in each county which showed the potential for overlapping actions in more than one court, there is insufficient data to determine the number of cases which involve one family that are being filed concurrently or consecutively in the criminal, domestic relations, dependency and delinquency courts.

Current systems fail to direct such cases to the appropriate judicial forum at the beginning of the action and no efforts are made to avoid or coordinate duplicate orders and services to families and children. However, without the statistical data base, the Task Force cannot recommend the creation of a Family Relations Division. Additionally, with the overburdening of the courts and the inadequate resources, the present system

functions as well as it does only because of the degree of judicial specialization within each of the courts serving families. This specialization permits each court to more efficiently handle the heavy volume of cases within the family courts.

### **Findings**

The Task Force identified the following problems to be significant.

- **Lack of resources** — The Task Force finds that all aspects of the family court system (as defined in Chapter 1), especially related social service agencies, lack adequate resources to provide for the needs of families and children and to meet the legal mandates prescribed by the Legislature.
- **Lack of access to information** — The Task Force finds that judges and other professionals in family courts and social service agencies frequently do not have access to all essential information to make fair and impartial decisions and to provide necessary services to families and children.
- **Lack of adequate training** — The Task Force finds that many professionals working within the family court system are not adequately trained to handle the complexities of family legal issues.
- **Lack of coordination** — The Task Force finds that agencies and judges involved in family court cases lack a mechanism to coordinate their efforts to better assist families in resolving their conflicts.
- **Inadequate services to families** — The Task Force finds that there are insufficient court and social services available to assist families in crisis.
- **Lack of consistent orders** — The Task Force finds that the courts are issuing inconsistent orders which create confusion, undermine the respect parties have for the court and can be dangerous to the parties involved.
- **Lack of responsiveness** — The Task Force finds that families in many jurisdictions are forced to wait far too long to have their cases heard and to have orders issued to help them resolve their conflicts.

The Task Force finds, after considerable deliberation and discussion, and four public hearings, that family court issues are among the most important issues facing our society today and cannot be emphasized enough. Family issues and the impact of the court system on families must be treated as a high priority by the Legislature, the courts, attorneys, law enforcement, social service agencies and mental health professionals. If the legal problems of families are not treated or resolved at the time of their first contact with the court, there will be further problems for the families and, eventually for the community. When the legal and social services systems do not coordinate services for families, often the families' problems are not resolved and can escalate. For example, when abusive parents do not receive necessary services, the abusive behavior can appear in the next generation.

The Task Force finds that most families who interact with the family courts are law-abiding citizens who are there to resolve conflicts. They should be treated with respect and dignity. In contrast, family courts tend to be the lowest priority in the court system and are not presently oriented toward resolving family conflicts in a timely manner. The Task Force was constantly reminded that the family court system is in crisis. Due to the many problems identified by the Task Force, the family court system cannot respond to the basic expectations of parties.



This problem is compounded by the fact that frequently parties in family courts have unrealistic expectations of what family courts can do for them. The parties in family courts must be educated as to those conflicts a court can resolve and those it cannot, in order to feel they have been fairly treated in a timely manner. Finally, family courts must receive needed resources in order to meet those responsibilities that are appropriate to the judicial system.

It is imperative that families receive needed services earlier in the process. The Task Force was told repeatedly, and concurs, that providing services earlier in the life of the case can mitigate a number of problems which appear later, frequently with the effect that less intervention is required. When a family is in crisis, it looks to the community for help. Social services and the legal system may become the "parent" temporarily.

Courts are the government's means of holding itself accountable to the public, in general, and to families, specifically. It is, therefore, critical that the legal system respond in a timely fashion to the problems of families and children. However, the present system is severely underresourced and this lack of resources has reached such crisis proportions that the judicial system is incapable of responding to the problems of families.

The problem, however, is not solely one of a lack of resources; the judicial system must also examine the ways in which it allocates its inadequate resources. The Senate Task Force on the Family Relations Court is not the only group which has raised these concerns for discussion; the 1990 Judicial Council Gender Bias Task Force and the Judicial Council Advisory Committee on Private Judges reports have also highlighted these problems.

The Task Force finds that those coming before family courts should be granted certain fundamental rights. All persons who have filed or have responded to a case filed in family courts have the right to:

- have their cases heard in a timely manner,
- be treated fairly,
- have their cases handled expeditiously with issues consolidated to assure a minimum number of appearances,
- have consistent orders relating to their families and children even if they appear before multiple judges on multiple issues,
- have well-trained professionals (i.e. judges, attorneys, social workers, law enforcement) involved in and handling their cases,
- have adequate services provided to assist their families and children, and
- be involved in a court system that will not further traumatize their families and children.

### **Example**

The following case illustrates the lack of coordination in the current Superior Court and social service system. Husband and wife were separated and agreed that the couple's two daughters would live with wife and that husband would have parenting time by mutual agreement. Daughter began to complain of sexual abuse and wife took daughter to pediatrician. Pediatrician files a report with Child Welfare Services (CWS).

Daughter provides the same story and demonstrates with dolls to the CWS Emergency Response worker. CWS informs wife that they will confirm the allegations of sexual abuse and advises her that husband shall not have contact with the girls. CWS also indicates that if wife does not protect the girls, CWS will place them in protective custody.

CWS sends a copy of their report to the sheriff's office for investigation of a possible crime. Daughter is interviewed again.

Husband files for visitation with the domestic relations court and wants custody of the children because wife is delusional. Husband is arrested and charged with child sexual assault. Parents agree husband will have no parenting time until district attorney makes a decision on whether to prosecute the case.

District attorney decides not to prosecute because of the child's age and unreliability as a witnesses at the time of trial. Family Court Services recommends supervised visitation. CWS continues to tell wife to protect the girls and advises her that the children would be placed in protective custody if there were a visitation order.

A hearing is held by the domestic relations court and the judge orders supervised visitation until completion of a psychological evaluation of husband. Wife informs CWS of the domestic relations court order and CWS places the girls in protective custody with the maternal grandparents. The juvenile dependency court issues a no-visitation order to the husband.

This type of case creates confusion and turmoil in a family already in crisis.

### **Recommendations**

The Task Force finds that the existing Superior Court structure, by its nature, allows inconsistent orders, multiplicity of hearings and interviews, and uncoordinated services: it must be improved. If families are provided with well-trained professionals, adequate resources, consistent orders and timely hearings, the court system will not further traumatize families and children.

In order to resolve these problems in the Superior Court structure and to improve the service provided to families and children, the Task Force makes the following recommendations:

### **Resources**

The issues involved in the family courts are of the highest societal priority and yet they experience the lowest status within the Superior Court structure. This second class status is reflected in the allocation of resources to the family court. This lack of resources is so severe that all other issues are overshadowed by it.

The Legislature and county boards of supervisors must allocate additional resources to the family court system. A study should be conducted to determine the maximum requirements for workload standards for the family courts and related social service agencies. Resources must be provided which are adequate to meet these requirements.

Courtrooms, facilities and social service agencies should be provided to meet the psychological, space, and security needs of children and families. All family courts should have equal access to services and resources.

## **Children in the Family Court**

Children have special needs and the family courts must take special steps to ensure that those needs are met. The family courts must provide adequate services to children involved in court proceedings in order for the courts to obtain reliable information from the children.

Child advocacy programs should be established in each county to provide a full range of advocacy and support services to families and children involved in family courts. In order to reduce the number of people to whom each child must tell the same story, the Task Force recommends that each county establish professional Child Interview Specialists (CIS). All family courts and all social service agencies should consider the possibility of utilizing members of the extended family to provide support and services to families and children.

## **Coordination**

In order to eliminate the problem of families in multiple courts receiving conflicting orders, the various departments of the family court, law enforcement and adjunct agencies must be coordinated. Superior Courts and the Judicial Council should develop and adopt a protocol to identify families with multiple cases before multiple departments of the Superior Court, whether the cases are occurring concurrently or consecutively.

To ensure that all decision makers have access to relevant information concerning children and families engaged in court proceedings, confidentiality laws should be modified and counties should develop a method to share relevant information.

Juvenile dependency court judges should have the power to set and modify child support levels throughout the course of a dependency case where there is a significant change in the circumstances surrounding the care, custody and control of the child.

Agencies and court services dealing with families and children should be integrated and coordinated. In each case affecting a child, one agency should be assigned to lead in coordinating the services to the family and child.

## **Judiciary**

Because proceedings in family courts are distinctly different from other legal proceedings, with complex and difficult legal, emotional and social issues, judges assigned to family courts should be selected and treated with more attention than those in other assignments.

Family court judges must be well-trained, experienced and interested, and should be willing to make a three-year commitment to the family court assignment. Judges should be able to seek out family court assignments and should receive balanced family court assignments. An incentive should be created for judges to remain in family court assignments for at least three years.

When making full-time family court assignments, presiding judges should select judges interested and willing to make a minimum three-year commitment. They should be encouraged to rotate experienced and interested family court judges back into the family court assignment.

When allocating additional judgeships to counties, the Legislature should give priority to counties whose courts adopt and implement minimum three-year term guidelines in family court assignments, and to counties that demonstrate they have taken positive steps to ensure families are better served by the courts.

In making judicial appointments, the Governor should consider the need for and the importance of appointing attorneys with domestic relations, probate and juvenile law experience.

The Judicial Council should study whether family court cases should be handled by a direct calendar system. The Judicial Council should distribute information to all judges about the importance of family court proceedings. Information should discuss the complexities of the issues which come before these courts and the long-range effects of court orders.

The Department of Education should consider developing a curriculum that would provide students with a realistic insight into the complexities of cases in the family court. Family and juvenile law should be a required course for all law students.

### **Mandatory Training**

All professional participants in the judicial system should have mandatory, adequate and appropriate training, not only in their own fields but also in interdisciplinary areas. Every Superior Court judge, within one year of taking the bench, should receive at least two full days of education on family court issues at the Judicial College. Presiding judges should be encouraged to release specialty judges to participate in relevant educational programs.

Mandatory training should be established for domestic relations and juvenile law attorneys; licensed mental health professionals and social workers who work with families involved in court proceedings; non-licensed child welfare services employees; family court mediators who work directly with families and children; all peace officers and all district attorneys, county counsels, and public defenders assigned to a case in family courts.

## CHAPTER ONE

### DEFINITIONS

In discussing the findings and recommendations of the Task Force, it is important to have a common understanding of certain terms routinely used in family courts. The same words often mean different things to different people. Therefore, as used in this report, the Task Force defines the following words:

**Family courts** is used as a generic term to describe all courts that deal with children and families and with the issues that affect children and families at every stage. Family courts may include the domestic relations court, the juvenile court, the probate court, adoption proceedings, and the mental health calendar within the Superior Court.

**Family Relations Division** refers to the proposed court structure recommended by the Attorney General's Committee, which would group all civil child, family, and human relations-oriented legal actions within one division, to have coequal status with the Civil and Criminal Divisions of the Superior Court.

**Domestic relations court** refers to the court that hears dissolution of marriage, custody, visitation, family support, Uniform Parentage Act, Family Law Act, and paternity issues.

**Juvenile court** refers to the court that hears dependency and delinquency issues.





## CHAPTER TWO

### RESOURCES

*"In four words, we don't have enough."*

Joanne Lederman  
Executive Officer  
Alameda County Superior Court

### PRINCIPLE

**The Task Force finds that the issues involved in the family courts are of the highest societal priority. More citizens have experiences in the family courts than in any other part of the Superior Court. The subject matter of these courts directly affects the health and well-being of the families and the communities they serve, and yet they have experienced the lowest status within the Superior Court structure. This second-class status is most notable in the allocation of resources available to the different departments of the family court.**

**The Task Force found that the problems created by the severe lack of resources in the family court and the attendant services are so great that all other issues addressed by this Task Force were overshadowed by it, including the issue of the consolidation of the family court into a Family Relations Division. In some areas, services fall so short of those needed that many counties cannot meet statutory requirements.**

### RECOMMENDATIONS

1. The Legislature should authorize a comprehensive, professional study to determine the workload standards for the Superior Court and related agencies in domestic relations and juvenile law, including the requirements for court staffing.
2. Resources must be provided to meet these standards. Superior Courts must dedicate sufficient judicial resources to domestic relations and juvenile court caseloads.

### COMMENTS

#### The Court

The Task Force heard unequivocal, and in some cases alarming, testimony about the degree to which the judicial system is overburdened. A number of individuals expressed the concern that any consolidation of the courts would swamp an already strained system, rather than alleviate the problems.

*"My fear is that combining (courts) will drop (services) to the lowest common denominator, which is what's going on in dependency court, in terms of quality of services..."*

Dr. Karen Saywitz  
UCLA School of Medicine, Los Angeles

*"I fear that the family court will be overshadowed and overwhelmed by the devastating, urgent, serious cases of child neglect, abuse and delinquency."*

Dr. Janet Johnston  
Associate Professor, Stanford University

*"Right now, the worst job of dispensing justice is in (this area)...it's where the community is the most short-changed by the courts."*

Joanne Lederman  
Executive Officer  
Alameda County Superior Court

*"If you take two overworked systems and combine them, I don't see that you're going to have anything of benefit to anyone."*

Jerry Plummer  
Assistant Director  
Sacramento Children's Welfare Services

The Task Force finds that the overburdening of these courts is in great part due to the inadequate allocation of resources by the state to counties, or to the inequitable allocation of resources within a Superior Court, or both. Each of these allocations should be addressed through established guidelines.

The status of family court judges must be elevated so that these assignments will be sought by judges. It was suggested repeatedly during public hearings that family courts need more resources and more support staff to assist judges in these difficult assignments. If the family court has better resources, the assignment would be attractive to more judges.

It was beyond the scope of the Task Force to gather specific and comprehensive data about each county. The Task Force did not have the technical expertise required to establish workload guidelines. It therefore recommends that an analysis be undertaken with the aim of setting a minimum basic standard of service in juvenile and domestic relations courts, which includes consideration from a consumer's perspective of an approximate amount of calendar time given to a case, and staffing requirements for court clerks, bailiffs, and other necessary personnel. Such analysis requires time and expertise, and it is expected that it would require specialists who would coordinate the evaluation with the various affected agencies, including the Judicial Council, Department of Social Services, court investigative services, Family Court Services, and others.

The present system inadvertently permits overloading of non-jury calendars. Because the family courts are non-jury courts, there is almost no limit to the number of non-jury matters that might be assigned to those courts. Unlike criminal and civil courts, where one jury case at a time is assigned to a judge, family courts have had to devise strategies to handle cases on a production line basis. For example, family courts often take no or very little testimony. As a result, it is important that the standards be determined by the needs of the case, the decision-maker, and the consumer rather than by the overwhelming volume of business.

Presiding Justice Robert Gardiner's words written thirteen years ago are still true today:

*"Actually, in its use of courtroom time, the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment, quite often being fobbed off on a commissioner. One of the paradoxes of our present legal system is that it is accepted practice to tie up a court for days while a gaggle of professional medical witnesses expound to a jury on just how devastating or just how trivial a personal injury may be, all to the personal enrichment of the trial lawyers involved, yet at the same time we begrudge the judicial resources necessary for careful and reasoned judgments in this most delicate field — the breakup of a marriage with its resulting trauma and troublesome fiscal aftermath. The courts should not begrudge the time necessary to carefully go over the wreckage of a marriage in order to effect substantial justice to all parties involved."*

(In re Marriage of Brantner (1977) 67 Cal. App.3d 416, 422.)

It is recognized that there are a variety of models and a diversity of organizational structures from county to county, and some counties are able to accomplish certain tasks more efficiently. Establishing a standard caseload is not intended to establish a uniform procedure, but rather to ensure an adequate baseline of services based on adequate resources.

### Collateral Services

Of all the services provided to the family courts, the most seriously overburdened is Child Welfare Services (Welf. & Inst. Code section 16501.1). The extent of the depletion of resources is such that the issue of consolidation was seriously overshadowed by this fact. A number of witnesses expressed the concern that the consolidating domestic relations and juvenile courts would cause "the domestic relations court to sink".

One representative of a county social service agency stated that the overloading of caseworkers is so severe, resulting in rapid turnover, that his department cannot meet statutory requirements because of the following conditions.

- In some counties, staff has increased at roughly half the rate of the increase in cases over the last ten years.
- Services that were in place ten years ago are now gone — an adequate mental health system, counseling services in schools, Social Services programs, etc.
- The system is overwhelmed by an epidemic of crack-addicted babies, in some counties. Three years ago, perhaps 40 drug-addicted babies were born a year. Now, 50-60 drug-addicted infants are born in some counties every month.

*"We use battlefield metaphors. We do triage. We pick out cases that will die even if treated and set them aside, and take cases that will survive for awhile if they don't get treated and set them aside, and treat the ones in the middle. We don't respond to complaints from schools about head lice. We look at life or death situations — is the adult so bad that the child is likely to starve or its health is going to be endangered. We have become an emergency ward for families. We can only deal with those that are so dysfunctional that members can no longer physically survive without our intervention. This puts us in conflict with the reporting law and with other agencies.*

*"We're not saying clearly enough how bad things are. One Bay Area CPS (Child Protective Services) worker went out to do home assessment and she heard gunshots. She thought about her caseload and thought about overdue court reports and thought about all the various things that she had to do and she said, 'Oh, hell with it. I'm just going to wait rather than (go back to the office and then) come out here and make another visit.' And so she waited a little bit and people ran off and she didn't hear anymore gunshots and she went in and did her home interview."*

Witnesses testified that when Child Welfare Services is unable to respond to cases which qualify statutorily for service but are not severe enough to fit into adjusted criteria according to local policy, other agencies, perhaps less qualified, become involved in providing those services. For example, child sexual abuse allegations in the context of a dissolution for which there is no direct physical evidence are frequently evaluated by Family Court Services; however, Family Court Services does not have the resources or staff to adequately respond to and evaluate these allegations. This increases the confusion for families, attorneys, caseworkers and judges, and illustrates how the overburdening of one part of the system has a serious effect on the entire system.

It is apparent that Family Court Services is treated differently in different counties. Some counties provide adequate resources, others do not, because of inadequate funding. At the same time, it is clear that there is enormous support for mediation from domestic relations judges, attorneys, and from families, and that it is very cost effective. Research indicates that a substantial majority of families are more satisfied with the results of a mediation process than with an adjudication process. (See Pearson & Thoennes, Final Report of the Divorce Mediation Research Project, Children's Bureau, Administration for Children, Youth and Families, [1984], U.S. Department of Health and Human Resources; Duryee, Description of Court Mediation, [1990], research prepared through the California Judicial Council; Kelly & Gigy, Divorce Mediation: Characteristics of Clients and Outcomes, in Mediation Research: Process and Effectiveness of Third Party Intervention [Kressel edit. 1989] p.263; Kressel & Pruitt, Conclusion: A Research Perspective on the Mediation of Social Conflict, in Mediation Research: Process and Effectiveness of Third Party Intervention, [1989], p.394; Emery & Wyer, Child Custody Litigation and mediation: An Experimental Evaluation of the Experience of Parents, [1987], Journal of Consulting and Clinical Psychology, p.179, Vol.55, No.2.)

In 1981, when the Legislature mandated mediation services throughout the state, a fee was added to the filing fee for dissolution to pay for mediation services. This filing fee has never been adequate to pay for the services provided, though in many areas it remains the ceiling for the budget of mediation services. While the services more than pay for themselves by saving the court time, this cost savings in judicial and court staff time has not been passed on to the domestic relations courts or resulted in a increase in the number of mediators in Family Court Services.

Other recommendations in this report which deal with coordination between the courts and social services cannot be implemented if the system does not have minimum basic resources.

## **RECOMMENDATION**

3. Courtrooms and other facilities must be provided, designed to meet the psychological, space, and security needs of children and families during the time they are part of the proceedings in the family courts, as well as the needs of attorneys, the court, and court staff.
4. Social service agencies should be located and designed, wherever possible, to centralize services to families and children who are in proceedings in the family courts, and reflect a sensitivity to their needs.

## **COMMENTS**

*"The Kid's in Court program is for children who have to testify in a criminal court setting. It is run in conjunction with the Children's Hospital's Center for Child Protection. The purpose is to make the courtroom itself a less traumatic place. Different people speak to our children — not only social workers but also judges, both from the municipal court and the superior court, and court officers, primarily bailiffs.*

*"The children are allowed to role act, if you will, in a courtroom setting, having nothing to do with their particular case. The role setting has absolutely nothing to do with the molest or abuse but is a chance to be in a courtroom on a number of occasions before they actually have to testify just so the physical presence of the room itself and the physical locations of the respective players is not so scary and new to them on their first entry into the system. We feel we have a better chance of children testifying both accurately and candidly, and, therefore, as credibly as they possibly can.*

*"The program has been in operation for about two years...and I think over 400 children have been through the court school. We've just opened another one up in our Vista courthouse.... It's all volunteers right now."*

Harry Elias, Director  
Child Abuse Unit  
San Diego District Attorney's Office

The Task Force determined that family court proceedings give rise to significant emotional trauma on the part of the participants. The judicial system presents, by its very nature, a very formal, imposing and generally overwhelming setting to litigants, in part, to impress all involved with the seriousness of judicial proceedings. These attributes, however, can be terrifying to children and parents and, as a result, actually prevent them from effectively participating in the system on their own behalf. It is necessary to alleviate this fear so that children and families can be served properly by the courts. When court facilities are inadequate, the litigants may be further injured emotionally or physically, the process is demeaned, and good personnel are discouraged from participating.

The family court facilities must be designed to be child and family-oriented. There should be waiting rooms for children and witnesses, child evaluation rooms with child-centered decor and one-way mirrors which permit observation without intrusion, adequate offices within the courthouse for family meetings with Child Welfare Services and Family Court Services staff which provide for confidentiality, and the capability of providing protection and security for abuse victims — both children and adults.

The lack of protection is one of the most glaring deficiencies in most facilities. The Task Force was informed that three Bay Area courts have experienced shootings in domestic relations cases within the last five years — two resulted in fatalities. In spite of this, most domestic relations courts do not have a metal detector. Domestic violence victims wait in the same waiting room as their batterers. Child witnesses and victims do not have suitable places to wait and are forced to confront their perpetrators in the hallways. Some courts and court facilities lack waiting rooms altogether. One county houses its domestic relations department in the basement of the courthouse. In other locations, overcrowding forces angry participants into close proximity.

The fact that the nature of the facility directly influences the experience and the safety of the participants is illustrated by the following anecdote:

A Family Court Services office moved to newly designed space, which included a spacious waiting room and a child waiting room after having used an empty courtroom for a waiting room and support staff space. After the first week of occupancy in the new space, a secretary was asked how she liked it. She said: "It's great. I've only had to stop two arguments (between spouses as they waited for mediation) this week. I used to stop three a day."

Unlike juvenile proceedings, in domestic relations courts litigants address the most personal of issues to a packed audience, which significantly increases the emotional trauma associated with the experience. In addition to this, it increases the need for security.

In sum, the Task Force finds that court facilities need to be designed and built which are conducive to the task at hand, which minimize the psychological stress to the participants and provide for the safety of family members and court staff.

### **RECOMMENDATION**

5. Services and resources available to only one court department should be available to all family courts.
  - a) Court Appointed Special Advocates (CASA) programs should be established in all counties and available to all courts where children are the subject of proceedings;
  - b) Mediation should be available to the probate and juvenile courts in selected cases;
  - c) All family courts should have the option of providing counsel for children;
  - d) Low-cost and free services for monitored visitation and transfers of children should be available in family courts.

### **COMMENTS**

Court Appointed Special Advocates (CASA) programs have proved their worth in many jurisdictions. From its start in King County, Washington, CASA has been based on the effective use of volunteers. In CASA programs, a county provides a volunteer recruiter/trainer who establishes a corps of trained volunteers to assist families through the system. Volunteers often arrange for therapy, make home visits, assist visitation with



estranged parents, and provide information to the court. Generally, volunteers provide services to children which the court should provide but which cannot be provided by an underresourced court system. Many counties in California have established such programs to serve their juvenile courts. The same needs exist in cases in other family courts.

Some counties have initiated programs in which minor's guardianship cases are provided with mediation services as a first step in the court process. Other counties have started programs in which social services personnel are trained in mediation, or a trained group of mediators from Family Court Services provides mediation to selected dependency cases. The goal of mediation services is to reduce family conflict and to provide tools for appropriate decision-making about the child within the family itself. In addition, mediation provides relief to congested calendars. The selection criteria and benefits of such programs have been described in other jurisdictions. (See, i.e., Mayer, B., Conflict Resolution in Child Protection and Adoption, [1984], Paper presented at the 22nd Annual Conference of the Association of Family and Conciliation Courts, Denver, Colorado.)

Families who are the subject of proceedings in family courts often do not have the funds to provide counsel for their children. In many counties, dedicated members of the domestic relations bar have stepped in to provide this service pro bono. An attorney for the child is usually not necessary in domestic relations court, however, there are selected cases in which an attorney may be required to protect the interests of the child. The extent of the need, though not nearly as great as juvenile court, is greater than can be met with volunteers. This problem has been addressed with passage of AB 2708 (Hansen, Ch.754, Statutes of 1990) amending Civil Code section 4606.

In probate court, representation can be particularly important. Frequently it is not the parents, but relatives who are fighting for the guardianship of a child, at a time when the family is still suffering from the loss of one of its members. When there are little or no funds available for representation in a highly emotional matter, it is easy to lose sight of the children's best interests.

Social services agencies and Family Court Services in most jurisdictions struggle to find adequately trained professionals who will help children maintain safe contact with a parent. The large number of substance-abusing parents and, in particular, the disturbing growth of cocaine addiction has made this need particularly apparent. These agencies need trained individuals who will monitor visits in a neutral arena, monitor transition points between conflicted parents, and who are able to stop a visit if the child is in stress.

The Task Force believes that the ability to provide these services in all family courts will promote family stability, reduce the trauma to children and result in an overall savings of resources.



## CHAPTER THREE

### CHILDREN IN THE FAMILY COURTS

#### PRINCIPLE

**The Task Force finds that children involved in family courts have special needs. Because the "best interests of the child" standard is the standard by which all family court decisions are made, the court must take special steps to insure that children's needs are met. The Task Force believes that the court must provide services to children involved in court proceedings in order for the court to obtain reliable information from children.**

#### RECOMMENDATION

6. Child advocacy programs should be established in each county to provide a full range of advocacy and support services to families and children involved in family courts.

#### COMMENTS

*"I wholeheartedly endorse the suggestion in the Attorney General's report for a child advocate with a reasonable caseload for each child. One example where an advocate not only made a major difference in one child's life but also saved the county and the state a great deal of money was the case of a 12-year-old seriously emotionally disturbed girl who had 10 different placements and three social workers in five years. She had spent nine months at McLaren's Children Center, which is meant to be a temporary, 2-day shelter.*

*"The plan was to get the girl to voluntarily commit herself to Camarillo State Hospital. A volunteer advocate persuaded the Regional Center to provide in-home counseling and respite care instead. The school system provided in-school counseling and special education. Once these services were in place, a former foster family, who really liked the girl but couldn't handle her without services, agreed to take her at a cost to the state of \$700 a month. The girl was given a family-like atmosphere at considerably less expense to all."*

Pamela Mohr, Director  
Children's Right's Project, Los Angeles

The Task Force strongly agrees with the findings and recommendations of the Attorney General's Child Victim Witness Report concerning the need for each child involved in family courts to have, where appropriate, an advocate separate from any court-appointed attorney, or any person representing the parents or the county. Every child involved in a complex case or a case with a high level of conflict should be provided a knowledgeable, caring person whose primary responsibilities are to:

1. guide the child and family through the difficult investigation and court processes,
2. look out for the child's emotional well-being and best interests, and
3. identify and provide access to other advocacy services for the family and child.

Although in many cases an attorney may be appointed by the court to represent the child's legal interest, the child advocate will coordinate social services to the child and provide the child moral support. Providing services and support to the child may also help the entire family through the family court system.

While each county could establish a format suited to its own structure and needs, the Task Force recommends that all advocacy programs should offer the services listed below.

1. Ensure that the children's legal rights and interests are protected by seeking legal counsel when appropriate.
2. Consult with the child welfare worker in dependency cases regarding the services agreement with the family and the plan for meeting the child's needs.
3. Provide access to community resources for children and families, such as mental health treatment and financial assistance.
4. Consult with the child's caretaker in non-dependency cases.
5. Inform and educate children and families regarding the various investigative and judicial processes.
6. Evaluate the potential risk of abuse by the system in each case and help to avoid it.
7. Investigate and evaluate a child's needs and make recommendations to the court regarding placement, treatment, education, etc. (See Welf. & Inst. Code section 319.)
8. Prepare and consult with the family and children before and after court appearances.
9. Accompany children to hearings, shelters, courtrooms, and evaluations as support persons.
10. Visit children regularly and maintain ongoing relationships with children between appearances at legal proceedings.
11. Contact relevant agency personnel to resolve problems that result from lack of consistency and coordination among agencies.

It is important that children have their mental and physical health as well as their legal rights protected. Providing children with child advocates who are trained to assist them through the legal process would help children cope with the stress of being involved in a family court proceeding.

The Public Defender's Office in San Diego has a Child Advocacy Center where investigators, social workers, and attorneys represent children in dependency proceedings. In testimony before the Task Force, that Office recommended the adoption of such programs statewide.

Many counties have established Court Appointed Special Advocate (CASA) programs, as discussed in Chapter Two. The primary purposes of the CASA programs are to facilitate

family reunification, provide support to the child, and to provide information to the court. CASAs are trained, knowledgeable volunteers with a background in child welfare, appointed by the court to represent the best interests of children in court proceedings and to provide a support mechanism for children through a traumatic process. CASAs should be utilized in proceedings in all family courts as child advocates and should be appointed early in the proceedings.

The advantages of the advocacy programs are that one person who is aware of the different developmental levels and language skills of children would be assigned to assist each child through the legal system. Children would then feel like they have a friend within the legal system.

### **RECOMMENDATION**

7. In order to reduce the number of people to whom each child must tell the same story, the Task Force recommends that each county establish professional Child Interview Specialists (CIS). To accomplish this, counties should develop an integrated protocol with the assistance of law enforcement, social service agencies, judges from the family courts and the local bar association to ensure that each child be allowed to go through his or her entire statement with only one professional. The protocol would include the method of referring cases to the CIS, the standard process of the interview and the method of communicating the information to various courts. The Judicial Council should distribute the protocols of the various counties to further uniformity.

### **COMMENTS**

A trained specialist in the courtroom is essential.

*"The Evidence Code makes a provision to protect a witness under age 14...from undue harassment or embarrassment and to restrict the unnecessary repetition of questions. The Court should also take special care to insure that the questions are stated in a form which is appropriate to the age of the witness. The Court may, in the interest of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age of the witness."*

*"This typifies what is well-intentioned legislation but it fails to take into account that a Court has to be able to understand when a child doesn't understand the question being asked. It assumes that the parties involved (the public defender, D.A., defense attorney) are going to understand when a question is being asked, 'which is in a form that is not reasonably likely to be understood by a person of the age of the witness.' The parties have not been trained to recognize questions or words children can't understand."*

*"For example, a five-and-half-year-old, developmentally slow child, involved in a molest case, stated that she had been molested under the bed. The defendant did not fit under the bed and defense maintained that the incident could not have happened. The child was repeatedly asked where the incident took place. I knew what she meant but I had no standing to jump up and say, 'Excuse me, your Honor, can we rephrase that question?' I had to wait until a recess at which point I said to the child, 'When you say under the bed, do you mean under the bed on the floor, or do you mean under the sheets and blankets?' And she said, 'Under the sheets and blankets.'"*

*"There was a real language barrier there but there was no one to see it. The judge must be alert and trained to those issues but no one has any standing to alert the judge."*

Kerry Martin, Attorney  
Program Coordinator for Sacramento County  
Victim Witness Program

The Task Force believes that one significant area which adversely affects children and their families is the number of interviews to which children are subjected in cases which might interact with more than one court. A number of agencies may require an interview which could range from a few questions to lengthy sessions. The Task Force finds that if the number of interviews by different individuals were reduced the children and families would be better served.

Public testimony cited research showing that the burden on child victim witnesses stems to a greater extent from the number of unfamiliar people they have to deal with than from the number of interviews they undergo. Such contacts with multiple individuals are damaging to the child personally, raise the problem of inappropriately phrased questions and contaminated testimony, and injure the child's capacity to recount events accurately.

The role of the Child Interview Specialist (CIS) is different from that of the Child Advocate. The sole duty of the CIS is to interview the child, while the Child Advocate protects the best interest of the child throughout the entire legal proceedings. The Child Interview Specialist should:

1. be a licensed marriage, family and child counselor, a licensed psychologist, a licensed clinical social worker, or a psychiatrist;
2. have a minimum of 5 years of experience with children;
3. be skilled in listening carefully to the concerns of the child;
4. be able to take into consideration the age of the child;
5. be able to take into account the language skill level of the child;
6. be trained in child development, family dynamics, adult and child psychopathology; and
7. be trained in the evidentiary requirements of court proceedings.

The Child Interview Specialist would be the only individual allowed to conduct an interview with the child. No agency would be allowed to conduct separate and multiple interviews of the child. All agencies with questions for the child would be required to submit the questions to the CIS who would interview the child using the appropriate developmental language. Whenever possible, all advocates and investigative agencies, such as, law enforcement, Child Welfare Services, and Family Court Services, should be allowed to observe the interview out of the child's view. For example, a one-way mirror may be used or a contemporaneous video taping may be viewed.

The Child Interview Specialist might be called to testify to the family court to explain the child's developmental capacity and language skills and to explain why questions were asked in a particular manner.



## **RECOMMENDATION**

8. All family courts and all social service agencies should consider the possibility of utilizing members of the extended family to provide support and services to families and children.

## **COMMENTS**

Family courts often ignore or are statutorily precluded from considering the ability of the extended family members and those who have acted as psychological parents to provide support and services to families and children. Courts and agencies should be required to consider the extended family as a provider of support and services.

Courts and agencies should consider the extended family in reaching solutions about the child's welfare and should also positively consider the issue of standing of non-parents who serve in the psychological place of parents. When deciding placement of a child or children, the family court should consider a request from anyone who has had a "parent-like" relationship with the child: grandparents, foster parents, non-biological stepparents, gay stepparents, etc.



## CHAPTER FOUR

### COORDINATION

#### PRINCIPLE

The problem of families in multiple courts, receiving conflicting orders, must be eliminated. Instead of unifying the family courts into a single Family Relations Division, the Task Force finds that coordinating the various departments of the family court, law enforcement and the adjunct agencies which provide services to families and children can resolve that problem. In order to coordinate the present system:

1. Relevant information that every decision-maker needs to make competent orders concerning a child or family going through the court system must be accessible.
2. Judges, law enforcement and social service agencies should work together to reduce the number of contacts any child or family has with the legal system.

The Task Force finds that problems occur when families are involved in multiple cases before multiple departments. These problems can include a lack of coordination of services, inconsistent court orders, and incomplete information to each court and social service agencies involved in the proceedings.

#### RECOMMENDATION

9. The Superior Court in each county should create a Family Court Committee charged with developing a protocol designed to identify families with multiple cases before multiple departments of the Superior Court, whether the cases are occurring concurrently or consecutively.

#### COMMENTS

*"Rule 307 allows a judge to sit for all purposes in those small percentage of cases where there's overlap and the judge can settle those issues.... Rule 307 is like a uniform child custody jurisdiction act and permits judges to discuss and make decisions about who would take jurisdiction based upon the most convenient, appropriate forum. There is a set of criteria for making decisions so the family law judge might hear a juvenile matter.... You consolidate and coordinate in a case-centered way rather than a system-centered way. It really prevents a family from having to appear in several different jurisdictions."*

Hugh McIsaac, Director  
Family Court Services  
Los Angeles County

Creation of a Family Court Committee within that court will secure better coordination within a particular Superior Court. Such a committee would bring together judicial officers and court administrators with responsibility over the case management and calendaring of all cases focusing upon children and families. The committee would be responsible for developing local rules and protocols to identify and track families whose cases move from one court to another, taking into account discovery and confidentiality rules in each court.

Such a committee would be even more valuable in the larger courts. In the largest metropolitan courts, a Committee's existence would be critical to coordination. However, it is necessary even in smaller courts.

Families who become involved in multiple proceedings in multiple departments often experience significant problems. One major problem is the issuance of conflicting court orders. The most serious problem cited to the Task Force occurs when families are involved in dependency courts that order reunification services and a domestic relations court orders sole custody with no visitation by one parent. (In re William T. (1985) 172 Cal. App.3d 790; In re Brendan P. (1986) 184 Cal. App.3d 910; In re Anne P. (1988) 199 Cal. App.3d 183.)

Testimony revealed that, in those counties which have established regular meetings between judicial officers and administrators in juvenile and domestic relations courts, the coordination between those courts has greatly improved. The Task Force recommends that each Family Court Committee also include judicial officers and administrators responsible for probate guardianships, adoptions, mental health calendars and other calendars focusing upon children and families.

In order for cases to be coordinated, there must be some method of identifying cases in which each family or individual member of the family are participating. This could be accomplished by the Family Court Committee in several ways. A computerized data base of all cases in the court system might enable related cases to be identified. Such a system would require information relating to each of several family members (mother, child/victim, father, alleged perpetrator). Each moving party could also be required to identify all other pending legal actions as a part of the moving papers in any new legal proceeding.

The Task Force recommends Civil Code Section 5158 or Los Angeles County Procedure for Coordination and Consolidation of Multiple Child Custody Proceedings, Rule 307, be used as a model. Section 5158 requires each party to submit information in his or her pleading papers reflecting the child's present address and places and with whom the child has lived within the past five years. In addition, the law requires the party to list all court proceedings in which the child is involved. See Civil Code section 5158.

Los Angeles County Local Rule 307 requires all departments involved in custody issues to cooperate to eliminate multiple custody proceedings. "Custody proceeding" is defined as custody under the Family Law Act (Civ. Code sec. 4600 et seq.); guardianship (Prob. Code sec. 300); juvenile dependency (Welf. & Inst. sec. 300); juvenile incorrigibility (Welf. & Inst. sec. 601); termination of parental rights (Civ. Code sec. 232 et seq.); emancipation (Civ. Code sec. 60 et seq.); paternity and maternity under the Uniform Parentage Act (Civ. Code sec. 700 et seq.); writs of habeas corpus and warrants in lieu of habeas corpus (Pen. Code secs. 1474, 1497); protective orders to prevent domestic violence (Code Civ. Proc. sec. 545 et seq.); and mental health proceedings under the Lanterman-Petris-Short Act (Welf. & Inst. sec. 5000 et seq.). See Appendix D for Copy of Rule 307.

## **RECOMMENDATION**

10. The Judicial Council should adopt a Standard of Judicial Administration to encourage each Superior Court to develop rules or protocols to provide for the coordination of services and court orders relating to families who appear in more than one court system at or near the same time. The Judicial Council should collect and distribute the local court rules and protocols to all courts so that counties may borrow ideas from one another.
11. The Judicial Council should develop and adopt a model rule for the coordination of services and court orders for families who appear in more than one court system at or near the same time to be followed by local courts which fail to adopt a local court rule.

## **COMMENTS**

Testimony at the public hearings revealed a need to improve the coordination for families involved in multiple cases in multiple departments within a Superior Court. For example, there is often movement of cases from domestic relations court to juvenile dependency court. Some minors are dependents of the juvenile court and conservatees under the mental health law (Lanterman- Petris-Short Act). There are a number of cases in which parents are being prosecuted in the criminal court while their children are the subject of dependency proceedings in the juvenile court.

Such related legal actions can be better coordinated if each county adopts a protocol describing how families involved in multiple cases in multiple courts should be identified, how coordination issues should be decided, and how information should be exchanged.

The Task Force finds that cooperative case management and exchange of information is essential in all cases concerning children and family members appearing in multiple courts on multiple issues. This is the only way to ensure that each family receives consistent orders and coordinated services.

The Task Force finds that counties should develop protocols and local court rules to meet the needs of the individual county, taking into account its size, its court administration, its budget, and the relationship between its courts and social services agencies. The protocol and local rules that are developed should be collected and distributed by the Judicial Council to all counties to encourage the duplication of successful programs throughout the state. The Judicial Council should develop a model rule for those counties which fail to adopt their own rule or protocol. Ultimately, all counties should have a successful, coordinated case management system.

## **RECOMMENDATION**

12. Confidentiality laws must be modified so that judicial officers and other decision-makers may have access to all relevant information concerning children and families engaged in court proceedings.
13. Each county shall develop a method, either through the use of computers, or by combining other information sharing systems and procedures, by which all agencies, judicial officers, and court personnel can access all relevant information on pending cases, interviews, judgments, or dispositions relating to a particular family or individual family member.

## **COMMENTS**

The Task Force believes that, in order for a decision-maker within the court system to make the best possible decision, that person needs all relevant information the court system has collected about the parties. Tempering this principle is the fact that some information may be confidential for legitimate reasons. The balance between these two competing interests must be addressed by a protocol for the exchange of relevant information between court systems and the agencies which serve the courts.

Different systems collect and store information about persons who have contact with the legal system. Law enforcement, probation, social services, medical, mental health, educational, and court systems are the main collectors of information. Yet each has restrictions placed upon the disclosure of information, as described in statutory and regulatory schemes unique to each agency. Many times there are conflicting statutes and regulations relating to confidentiality.

The Task Force finds that the complexity of the confidentiality statutes and regulations results in conflicts and confusion. In addition, it often precludes courts, court services, and social service agencies from obtaining necessary information to provide families with continuity and consistency of services.

Local jurisdictions have attempted to overcome some statutory complexities by drafting blanket orders permitting courts to obtain information from various social service agencies. Some believe that these blanket orders may be improper authorizations by the courts to social service agencies.

The Legislature, recognizing that there is a problem, passed legislation permitting some of this information to flow more freely. Penal Code Section 11167.5 provides for the sharing of information between persons or agencies who are involved in the investigation of child abuse. However, the Task Force finds that more legislative action is necessary if all of the different agencies and confidentiality statutes are to be coordinated.

It is possible to allow an exchange of information within and between agencies by developing a specific local rule. For example, Santa Clara County has developed a local rule addressing the exchange of information between Family Court Services, the Probation Department and the Department of Children's Services (see appendix E). This rule permits three types of exchange:

1. oral exchange of some types of information,
2. written request for documents, and
3. noticed motion for release of more sensitive material.

This approach attempts to balance a social worker's need for accurate information with the families' right to confidentiality. Additionally, this recognizes the different levels of confidential information and requires more procedural detail as the sensitivity of the information increases.

Testimony presented to the Task Force indicated that divisions of the courts by subject matter and jurisdiction hamper the courts' ability to share information. Several courts may have investigators gathering the same information for different reasons about the same family. For example, in domestic relations court there may be a custody investigation; in a guardianship action there may also be a custody investigation; in juvenile dependency there may be a different type of custody investigation occurring. However, currently, there is no mechanism that provides confidentiality protections and allows the different courts to share the information.

Information important to one aspect of a family's life in one court is often equally important in another court dealing with that same family. Questions of custody, access, mental health, and guardianship may all be determined by agencies and judicial officers with only part of the available relevant information. Families believe they are not being treated fairly when the courts make decisions seriously affecting their lives based on incomplete information.

The Task Force is persuaded that an integrated computer system available to all interested and appropriate agencies and judicial officers would assist the court system track and identify children and families involved in the court system. A computer system could also identify families and children each time they come back into the court system, preventing families from getting lost in the system due to postponements, or lost or misplaced files. It would also protect them from being subjected to more than one judgment or conflicting judgments.



During testimony before the Task Force, many court administrators indicated that automated systems could identify these multiple proceedings and multiple orders. Once identified, many counties may realize that more families are involved in multiple proceedings in multiple courts than is now apparent.

In addition, there is a need for all counties to share information and identify families involved in proceedings in other counties. A statewide computer system would enable the courts to share information with other counties, preventing different counties from issuing conflicting orders.

The Task Force found a need to identify when and how many times a particular family or child has entered or re-entered the system. If sufficient resources were allocated to implementing new and reorganizing existing information systems, families would benefit because their cases would be resolved with a minimum number of appearances.

### **RECOMMENDATION**

14. Dependency court judges should have the power to set and modify child support levels throughout the course of a dependency case where there is a significant change in the circumstances surrounding the care, custody and control of the child. In addition, the dependency judges should have the power to make child support orders at the time dependency actions are dismissed.

### **COMMENTS**

Family courts function properly when they are able to resolve a family's legal problems with as few appearances in as few courts as possible. Each families' different legal problems, however, may involve some different parties, attorneys, courts, agencies, and procedures. One goal of the legal system should be to enable the family courts to resolve as many of the family or child's legal problem in as few proceedings as possible.

In order to accomplish this goal, the courts that make up what the Task Force defines as family courts should have the authority to make the orders necessary to resolve a family's legal problems. However, if the court is not the appropriate court to resolve all of the family's legal problems, the court should, at a minimum, make the orders necessary to ensure the family will continue in the system with consistent orders and a minimum number of appearances.

Five years ago, before the passage of amending legislation, when a dependency action was dismissed in juvenile court, the parties had to begin again in the domestic relations court to establish custody and visitation orders. In the past few years, practitioners persuaded the Legislature to empower the dependency court to make family law orders consistent with the safety of the child. Welfare and Institutions Code Section 362.4 now permits some orders to be made and filed in any county. It has also enabled the dependency court to dismiss dependency actions more quickly and efficiently than when it had to rely upon one parent to secure family law orders prior to the dismissal. See In re Kelvin M. (1978) 77 Cal. App.3d 396.

The dependency judge also may now make restraining orders during the pendency of a juvenile proceeding as well as when the dependency action is dismissed. See Welfare and Institution Code Section 304. The dependency court may also make paternity findings when a petition has been filed in juvenile court. See California Rules of Court, rule 1412(m). Such authority enables the family to have several important legal issues resolved during the pendency of one matter.

However, other situations should be considered to expand the authority of the dependency judge. The judge should have the authority to set and modify child support orders during a dependency case and should be able to make child support orders when a dependency action is dismissed. Although a deputy district attorney from the support division may not be present, the district attorney could be given notice of the dismissal/child support proceedings.

Family courts should have the authority to make orders to resolve the legal problems of the families before them. For example, the dependency judge should have the ability to require the parents of the minor before the court to comply with a court plan. The judge in a juvenile dependency case who is ordering the guardianship of the person of a minor should have the authority to order the initial guardianship of that minor's estate as well, with subsequent review of the guardianship by a probate judge. A probate judge should be able to modify child support orders based upon changes in child custody as a result of guardianship proceedings.

If a judge is not statutorily able to make the required orders, to resolve the family's legal problems, he/she should be obliged to inform the parties on how to file for the appropriate orders in other courts.

### **RECOMMENDATION**

15. Agencies and court services dealing with families and children should be integrated and coordinated. In each case affecting a child, one agency should be assigned to lead in coordinating the services to the family and child.

### **COMMENTS**

The Task Force finds that services provided to children and families should be coordinated and one agency should be designated as the lead agency responsible for organizing activity relating to that family and child. This approach will minimize the number of proceedings in which a family is involved, will minimize the number of interviews a child is subjected to, will reduce the possibility of conflicting orders and increase the efficiency of services. The lead coordinating agency would identify and track a family through the court process, ensuring that services were provided and orders were consistent.

A good example of this type of coordination is the system established in Placer County called the Special Multi-discipline Assessment and Referral Team (SMART). SMART recognizes and acts under the principle that, in appropriate cases, there is a need to designate a lead agency and to have a unified management system for cases that are particularly complex. An agreement was established between the Placer County Probation and Welfare Departments, the Mental Health Division of the Health Department and the Placer County Superior Court.

Cases are referred to SMART when children who have complex personal, family or social problems or may be involved with several social service or law enforcement agencies. The SMART Assessment and Referral Team reviews case histories, deliberates the proper allocation of resources and assigns the case to a lead agency for management and disposition. Referrals can be made to other agencies and SMART follows each case. All materials and information received by SMART are confidential. (See appendix F.)

According to Judge Richard Couzens, Placer County Superior Court:

*"SMART has been in operation for a year and a half. We've dealt with over a hundred children in this process. We have never had an appeal or unresolved dispute. We have found that because it has brought the players together so well, it has virtually resolved and focused on all of the extremely complex cases. We generally start this process prior to Juvenile Court so when I get a case I am told that it has been a SMART-reviewed case and that is their recommended approach. People are automatically then on track, they hit the ground running with the child and we get services a lot sooner than we otherwise have."*

Orange County has a number of approaches to address the problems that families encounter when they are involved in multiple proceedings in multiple departments of the Superior Court. Orange County requires coordination between various departments within its Superior Court. The Superior Court has developed a protocol which "coordinates the efforts of the different court systems so that the child's needs are served and the resources of the family and the court are not wasted." To achieve better coordination of cases involving the same family, the court and social services agencies agree to increase the exchange of information and determine the most appropriate forum for the resolution of the issues relating to the child.

In addition, Orange County has initiated a Child Abuse Service Team (CAST) pilot program, which centralizes all investigative and crisis services for every child abuse victim. The CAST program coordinates the personnel who are involved in investigating allegations of child abuse. This coordination of services minimizes the trauma to the victims of child abuse by minimizing the number of interviewers, and therefore the number of interviews.



## CHAPTER FIVE

### THE JUDICIARY

#### PRINCIPLE

The Task Force believes that proceedings in family court are distinctly different from other legal proceedings, with increasingly complex and difficult legal, emotional and social issues. The Task Force strongly believes that judges assigned to courts which handle issues affecting families should be selected and treated differently and with more attention than those in any other assignment. Child and family-related proceedings demand well-trained, experienced and interested jurists to hear and fairly resolve these cases. The Task Force also believes that these assignments require that any judge assigned to these courts be willing to make a three-year commitment to remain in the assignment and to attend relevant judicial education programs.

#### RECOMMENDATIONS

16. Judges assigned to the family courts should remain in that assignment for at least three years.
17. The Judicial Council should adopt a Standard of Judicial Administration so that courts (1) establish a procedure by which judges can seek out family law assignments and (2) create an incentive for judges to remain in family court assignments for at least three years.
18. Presiding judges, when making a full-time family court assignment, should select judges interested and willing to make a minimum three-year commitment.
19. The Legislature, when allocating additional judgeships to counties, should give priority to counties whose courts adopt and implement these minimum term guidelines in family court assignments, and to counties that demonstrate they have taken positive steps to ensure families are better served by the courts.

#### COMMENTS

*"I imagine in Sacramento County, judges stay on the family law bench anywhere from 3-18 months. The problem is not so much that that's a short period of time — it wouldn't be if [the judge] coming into court were a family law practitioner to begin with but we have attorneys general appointed to judicial positions and the first three months, they're lost.*

*"They may be able to help a new practitioner but they are of little assistance to experienced counsel with a more difficult case. I will settle simple cases with other competent counsel but if it is a very difficult case, I will go to court and end up with someone who has been a judge for three months and is still learning how to be a judge, how to make decisions, who still has this monstrous body of law to learn.*

*"If I have an attorney on the other side who's experienced, I will call him up and find out who we're going before and if that person is not helpful, we'll try and get another judge or simply throw up our hands and say, 'We'll just settle it ourselves.' It's not the judges' fault. I have found most have a good sense of what to do, but have little time or experience.*

*"You want predictability — having judges come in and then leave doesn't allow that. It just leads to more litigation, more cases in court and less time for the judge. There's no question that the Family Law Court, at least in Sacramento County, is a mandatory internship before you become a real judge."*

James Mize, Attorney, C.F.L.S., Sacramento

Comments made by members of the Task Force and testimony given during public hearings emphasized that the issues and the law in proceedings in the family courts are very difficult and highly complex. Some families going through the courts are dysfunctional and dealing with them requires special knowledge and skills beyond the experience of most judges. It takes judges at least one year to learn the process, become knowledgeable about the law, learn about the community resources and services, and become acquainted with the dynamics of families in crisis and the long-term effects of dissolution on children and families. By their second year in the full-time family court assignments, judges begin to perform at a higher level of proficiency and productivity.

The training judges receive, both on and off the bench, begins to mature in their second year in the assignment. A San Diego Superior Court judge told the Task Force that, in her opinion, it was important to have lengthy assignments in full-time specialty courts. She would like to see the Judicial Council encourage counties not only to solicit interested judges and try to assign them accordingly, but also encourage them to remain in those assignments long enough to be most effective. It takes time to acquire the necessary knowledge in family court — not only does a judge have to learn law and psychology, but must also learn the functions of the various agencies and what they do to assist families. The Task Force determined it is poor public policy to prematurely rotate judges out of these assignments once they have received training and experience. The Judicial Council has recognized this need in Juvenile Courts by its passage of Rules of Court, Appendix, Section 24.

Additionally, members of the Task Force and members of the public and judiciary who testified before the Task Force stated that the first, and often the only contact many people have with the Superior Court system is in a family court proceeding. The public perception of the judicial system to a great extent is formed in the family courts. A Bay Area attorney testified that when such contacts with the judicial system reveal insensitivity, these contacts are not likely to instill a great deal of respect for the system or reverence for the majesty of the law.

Overwhelmingly, the testimony by judges, attorneys, and mental health professionals expressed the need for highly trained judges serving a minimum of a three-year assignment in the family court. In order to insure that the public believes that the judicial system does dispense justice, it is essential to have experienced, well-trained judges in family court assignments.

## **RECOMMENDATIONS**

20. In making judicial appointments, the Governor should consider the need for and the importance of appointing attorneys with domestic relations, probate and juvenile law experience. The Governor, in making appointments to the Superior Court, should appoint a sufficient number of persons who express a willingness to spend an appropriate portion of their judicial career in a family court assignment.
21. Each court should develop a structure which permits the work of the family courts to be conducted by interested and experienced judges.

## **COMMENTS**

Judges experienced in domestic relations and juvenile law issues better serve the public. In addition, judges who are experienced and trained in family court issues enhance the public's perception of the judicial system when serving in the family court assignments. Such judges are able to handle overwhelming caseloads in a more efficient and effective manner and in one more satisfying to the public. Many of the domestic relations and juvenile law practitioners who testified during the Task Force's public hearings complained that the current Administration has appointed a predominance of prosecutors, appointing very few attorneys with any domestic relations or juvenile law experience. The Task Force finds that there must be a balance in judicial appointments to include all aspects of law. Approximately one- third of the business of the Superior Court falls under the jurisdiction of the family courts. Judicial Council of Cal., Ann. Rep. (1990), vol. II, table T-3, T-4, p. 62-63.

The Governor should inquire into a candidate's willingness and or interest in serving in an assignment in the family courts. One recent example of the need for this inquiry is the case where a Superior Court judge resigned after only three days on the bench because he was assigned a domestic relations case. This is one consequence of the judicial selection process not considering an appointees' interest in conjunction with the needs of the court.

In addition to improving the status of the family courts, appointing experienced and interested attorneys as judges in family courts would improve the quality of judicial handling of these cases and reduce the backlog of cases in domestic relations and juvenile court calendars. It improves the efficiency of the bench.

The San Diego bar has reported some success in lobbying the Governor to appoint domestic relations attorneys to the bench. By putting practitioners on the bench who have devoted professional practice to the area, San Diego has increased the commitment level and the quality with which these cases are handled by the court.

## **RECOMMENDATIONS**

22. The Judicial Council should develop and adopt a Standard of Judicial Administration to encourage presiding judges to rotate experienced and interested family court judges back into the family court assignment.
23. Judges should receive balanced family court assignments. By being assigned to hear all aspects of a case, they can avoid the "burn-out" associated with high volume law and motion calendars.
24. Presiding judges should consider appointing experienced and interested judges who want to return to a family court assignment.



25. The Judicial Council should study whether family court cases should be handled by direct calendar systems.

## **COMMENTS**

The Task Force was told by one domestic relations court judge that it is an injustice to litigants to have a judge presiding over their case who is worn out by the onerous, overwhelming tasks faced by judges sitting in assignments involving child and family related proceedings. There are several methods the court can use to assist judges in these difficult, high-volume assignments.

### **Judicial Rotation**

Domestic relations court assignments should allow for rotation in and out of difficult high volume calendars. Testimony received during public hearings showed that there is a high incidence of "burn-out" among judges who sit in domestic relations court assignments. This is due not only to the fact that the calendars are high-volume but also because they are stressful as each decision heavily impacts a family. In family courts, judges alone make important decisions; there is no jury. This places additional pressure on the judges in these assignments.

One judge, in testimony before the Task Force, stated that the rotation of experienced judges back to a domestic relations court would result in a more positive view of the assignment by other judges without domestic relations experience. When judges see other well-respected judges leaving a civil or criminal law assignment to rotate back into domestic relations court, the assignment is viewed in a more favorable light.

### **Balanced Assignments**

The Task Force believes that there must be some balance to assignments within the domestic relations court. In many counties, judges spend months handling only preliminary matters, such as high volume domestic relations law and motion calendars, while domestic relations trials are heard by other judges. Each judge in domestic relations assignments should have the opportunity to hear all phases of domestic relations cases.

### **Appointment of Experienced and Interested Judges by the Presiding Judge**

The Task Force determined that the family court will have strength and stature in direct proportion to the attitude expressed toward it by the presiding judge. If the presiding judge consistently assigns inexperienced judges to the family courts, the assignment will typically be viewed with distaste. However, if more experienced judges are rotated through family court assignments, the assignments will be viewed as being equal in importance to any other assignment.

Members of the Task Force recounted experiences where judges sitting in domestic relations assignments were willing to continue in that assignment, but were moved, against their wishes. New judges, with no family or juvenile law interest or experience, were then assigned to domestic relations court in their place.

### **The Direct Calendar System**

Some judges and attorneys feel a direct calendar or federal system may improve the quality of justice to litigants, while at the same time reducing "burn-out" of judges by allowing them to hear all phases of a case. In this type of system, a case is assigned to a judge at the time of filing and remains before that judge throughout the life of the case.

## RECOMMENDATIONS

26. The Judicial Council should distribute information to all judges about the importance of family court proceedings. Information should discuss the complexities of the issues which come before these courts and the long-range effects of court orders.
27. The Department of Education should consider developing a curriculum that would provide students with a realistic insight into the complexities of cases in the family court.
28. Family and juvenile law should be a required course for all law students.

## COMMENTS

In order to appreciate the complexities of the issues in family courts, the Task Force recommends that the legal profession and the public receive adequate education. If this is accomplished, all participants can form reasonable expectations and can understand the importance and long-range implications of family court proceedings.

### Public Education

The public and judges should be educated about the importance of family court proceedings. Since the contact with family courts is often the only contact citizens might have with the court system, it is important that each party believe that he or she was treated fairly and received just results. The Task Force is convinced that if the public were educated about the complexities and difficulties of the issues before the court in these proceedings, parties would have more realistic expectations; this, in turn, would result in greater respect for the very difficult jobs that judges must perform in these assignments.

### Education for Students

Family law and juvenile law should be required courses for all law students. Most law students will have some future contact with the family courts because the issues involved there pervade all areas of law. Educating law students in family court issues will help them, as professionals, to understand the difficulties in the legal system and recognize the competing public policies.

In addition, a junior high school principal who testified at the Sacramento public hearing suggested that students should be educated in the workings of the Superior Court and Municipal Court process. Although they receive information about the United States Supreme Court and the justice system generally, most students will never have any contact with the Supreme Court. It is much more likely that they, their friends, their parents, and relatives will have direct contact with family court systems. Therefore, a course about local court systems would be invaluable for those who are likely to have to use that system.



## CHAPTER SIX

### MANDATORY TRAINING

"We take our kids to pediatricians, pediatric dentists. I teach college but I am not licensed to teach grade school. Other professions have recognized the need for specialists when working with children during the formative years. So should the legal profession."

Dr. Karen Saywitz, Assistant Professor  
UCLA School of Medicine

### PRINCIPLE

**The Task Force believes that in order to provide the public with the level of service it deserves, all professional participants in the judicial system should have mandatory, adequate and appropriate education and training. This education and training should be not only in their own fields but also interdisciplinary.**

### RECOMMENDATIONS

29. Every Superior Court judge, within one year of taking the bench, should receive at least two full days of education on family court issues at the annual Judicial College.
30. The Judicial Council should develop and adopt Standards of Judicial Administration recognizing the importance of specialty training and encouraging presiding judges to release specialty judges to participate in relevant educational programs.
31. Every judge assigned full-time to family court, within two months of beginning the assignment, should be required to attend at least one full week of intensive education on family or juvenile law by the California Center for Judicial Education and Research (CJER) and should attend an additional annual Statewide Institute on family court issues. The CJER educational sessions should include course material on the following issues:
  - (A) Custody — information including, but not limited, to the following issues: family dynamics, visitation with parents, grandparent and step-parent visitation; restricted/supervised visitation; sexual abuse issues; physical and domestic abuse issues; shared/split custody; mediation process; psychological evaluations/experts; modification; enforcement; adolescent/teen-age children and preferences; appointment of counsel for child.
  - (B) Support — information including, but not limited, to the following issues: existence of income for both parents; need for support; determination of income amounts; accountants (to review business records, bank statements, tax returns, etc.); evaluating ability to earn; computer software (use and knowledge); determining ability to pay (net income); state guidelines for support; supplemental expenses (day care, medical, school tuition, etc.); hardship deductions; child's and spousal needs; modification; enforcement (wage assignments, tax intercept programs, URESA); tax consequences of support; duration of spousal support; realistic living expenses; standard of living of the marriage.

- (C) Dissolution or legal separation — information including, but not limited, to the following issues: custody/legal separation; characterization and division of property and debts; location of assets and/or debts; valuation of assets; experts (accountants, appraisers of business, real property, and personal property, actuaries, etc.); deferred division/sale of the family residence; alternate valuation dates; Epstein credits; tax consequences of property division; reimbursement for separate property contributions; equalization payment; restraining orders; distribution of pension benefits.
- (D) Child development — information including, but not limited, to the following issues: stages of child development; the following topics would be addressed with each stage of development: cognitive and linguistic capabilities of the children; the effects of loss and separation; the impact of familial separation on children; the impact of protracted litigation on children; the ability of children to address parental preferences; consideration in establishing a parenting schedule responsive to the child's development; interviewer's skills of children of various ages; impact of divorce.
- (E) Substance abuse — information including, but not limited to, the following issues: categories of substances (i.e. alcoholism, hallucinogens, amphetamines, barbiturates, solvents, heroin, cocaine, marijuana); definition and differences between abuse and addiction to a substance; identification/characteristics of a substance abuser; impact of substance abuse on the family environment (role of family members, interaction between spouses, parental patterns and children's adaptations); impact of parental substance abuse on the child's development; parental ability to form attachment with children; models of treatment and the stages of the recovery process.
- (F) Sexual Abuse of Children — information including, but not limited to the following issues: definition/ patterns of sexual assault on children and adolescents; misconceptions about child abuse; behavioral indicators by children of existing abuse; family patterns (role of the molested child, the victimizers, the mother of the victims); dysfunctional family dynamics (interaction between offender/ molested child, non-offender parent/ child); guidelines for assessment and management of the offender; models of treatment and stages of the recovery process for the offender parent/non-offender parent and the victim.
- (G) Domestic violence — information including, but not limited to, the following issues: definition/patterns of violence; acceptance/ misconception about violence in society; dysfunctional family roles, interactions, patterns and adaptations; the impact of family violence on children; guidelines for assessment and management of the abusive partner/parent; alternative models of treatment and stages of recovery.
- (H) Child abuse and neglect — information including, but not limited to the following issues: the local child welfare agency's procedures for complying with reasonable efforts requirements; the child welfare and family preservation services available in the community and the problems they are designed to address; the structure and functioning of the child welfare agency and court system, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying; local experts who can provide attorneys with consultation and testimony on

the reasonableness and appropriateness of efforts made to maintain the child in the home.

- (I) Juvenile justice — information including, but not limited to the following issues: what child welfare and family preservation services are available in the community and the problems that can be addressed by these services as well as the rules and regulations for these services; which agencies and individuals are responsible for developing policies and providing services to children in the community; child development and in particular the importance of attachment and bonding and the affects of separation on young children.
- (J) Procedural aspects of family and juvenile law cases — information including, but not limited to, the following issues: the procedural law in these fields and also calendar management and administration techniques, such as, how to make hearings less adversarial in nature, and judicial control over the proceeding and the participants.
- (K) Adoption — information including, but not limited to, the following issues: termination of parental rights, permanency planning and placement, establishment of paternity, and foster care.
- (L) Social service and mental health systems — information including, but not limited to, the following issues: the type and availability of social services provided to children children and families; the structure, criteria and capability of the county mental health and social service systems, the private non-profit agencies and the private sector in the county that provide counseling and treatment services to non-welfare families.

## **COMMENT**

*"A young girl was asked to identify someone in the courtroom and she did not do it when she had identified the person previously. Afterwards, she was asked, 'Well, what happened?' she said, 'I don't know how to identify.' She didn't know what 'identify' meant. When the attorney asked, 'Can you point to the person who hurt you?' she could 'identify' him."*

Dr. Karen Saywitz, Assistant Professor  
UCLA School of Medicine.

In light of the complexities involved in family court proceedings, the Task Force is convinced that all professionals should receive interdisciplinary training on legal, mental health, and child development issues. Interdisciplinary training is a particularly important aspect of providing a coordinated delivery of services. The current lack of interdisciplinary training is one major source of the failure of the various family court to work cooperatively on behalf of clients.

In addition, all participants should have training in order to develop interviewing skills. The Task Force heard testimony that judges have difficulty getting time off the bench to attend training sessions which would be relevant and helpful to them in their assignments. The Task Force believes that presiding judges must structure calendars in such a way as to provide family court judges sufficient time to attend workshops, conferences and courses to obtain the training they need to to perform their assignment competently.

The Task Force finds that training is not only necessary to ensure competent job performance, but will also enhance the status of family court assignments and proceedings. Because the law in these areas is so complex and changes so frequently, and because research and development regularly uncovers new theories of family dynamics, the Task Force finds that the legal system will dispense a higher quality of justice and will work more efficiently if the participants in this system have a more well-rounded base of information, education and experience from which to draw. With well-trained professionals, the system will be more consumer-oriented and will be more accountable to the needs of families. In addition, time delays normally associated with court proceedings will be reduced if all participants are better educated.

The Task Force strongly believes that decisions which affect the future of the family are among the most important decisions that society must make. They are far too important to be made by judicial officers whose only training is "on-the-job." The Task Force strongly believes that mandatory judicial education and training is essential to meet the needs of families.

### **RECOMMENDATIONS**

32. Mandatory training should be established for domestic relations and juvenile law attorneys. Training may include some information in the following areas: child interviewing skills, domestic violence, abuse, developmental skills of children, community property, support, custody, visitation, child abduction, mediation, and dysfunctional families. The training would be part of the continuing legal education required under existing law, and could be obtained through Continuing Education of the Bar or through private, accredited courses.
33. Mandatory training should be established for licensed mental health professionals and social workers who work with families involved in court proceedings. Training should include some information on the legal procedure in: child as a witness, due process, domestic violence, abuse, custody, visitation, child abduction, and obtaining and enforcing temporary restraining orders.

The training should be at least 12 hours a year. The training could be provided through their licensing board, professional organizations, private accredited courses, through Judicial Council programs or court employers.

34. All counties shall provide training to all non-licensed child welfare services employees and family court mediators who work directly with families and children. The training should include both family law and juvenile law issues, as well as training in child development and interviewing skills.

### **COMMENTS**

The Task Force finds that interdisciplinary training is essential to attorneys and licensed mental health professionals and social workers who work with families in judicial proceedings. To ensure that professionals are well trained in both mental health areas as well as legal issues, it is clear that training must be mandated.



## **RECOMMENDATION**

35. A one-day Commission on Peace Officer Standards Training (POST) course should be mandatory for all peace officers in the following areas: the legal issues involved in the enforcement of temporary restraining orders; the complexities of family dynamics in dysfunctional families; domestic violence; the use of restraining orders; child development, including the trauma to children upon being removed from their families; coordination with emergency response and other social service workers; and interviewing skills when dealing with children, including language development and comprehension.

## **COMMENTS**

The Task Force finds that peace officers need training in order to interact effectively with families, for their own safety and the protection of the family members, and to work effectively with other agencies.

## **RECOMMENDATION**

36. All district attorneys, county counsel, and public defenders assigned to cases in family courts, should have training in the following issues: domestic violence; abuse; neglect; abduction; childhood development issues; modification and enforcement of all court orders; dependency; delinquency; guardianships; conservatorships; interviewing children; interviewing children, and emancipation.

## **COMMENTS**

All district attorneys, county counsel and public defenders involved in this system, even to a limited extent, need training in a number of different areas in order to more effectively work for just results while at the same time protecting the best interests of the child. An annual two-day training course should be provided for every deputy assigned to family courts.



## **APPENDIX A**

### **METHODOLOGY**

The Senate Task Force on Family Relations Court was created by Senate Resolution 7 to review recommendations suggested to it, including the implementation of a Family Relations Division, and to develop specific proposals for revision of the existing court system.

The Task Force consisted of fifteen members and co-chairpersons appointed by the Senate Committee on Rules. See Appendix B. Support staff was provided by the Senate Office of Research.

General meetings of the Task Force were held in San Francisco and Los Angeles. Public hearings were held by the Task Force in San Francisco, Los Angeles, San Diego and Sacramento. Members of the public were invited to comment on the current structure of the Superior Court and on the creation of a Family Relations Division. See Appendix C for a list of the speakers. Transcripts of the public hearings are available from the Senate Office of Research.

Using its own expertise and comments from the public hearings, the Task Force developed this final report, which contains its findings and recommendations to the Senate Committee on Rules and the Judicial Council.



## APPENDIX B

### **Biographies of the Task Force Members**

**Senator Bill Lockyer** is Co-chair of the Senate Task Force on Family Relations Court. He has been a member of the Legislature since 1973, and was elected to the State Senate in 1982. He has served as chairman of the Senate Judiciary Committee since the 1985-86 session. He is a member of the following Senate committees: Appropriations, Elections, Governmental Organization, Industrial Relations, Revenue and Taxation, and Toxics and Public Safety Management. He completed his work for a Juris Doctor Degree from McGeorge School of Law, University of the Pacific and is a member of the California Bar Association. He currently resides in Hayward.

**Justice Donald King** is the Co-chair of the Senate Task Force on Family Relations Court. For six years he was the Domestic Relations Judge in San Francisco Superior Court. He was appointed to the Court of Appeal in San Francisco in December, 1982. He is a member of the California Judges Association and former member of the Judicial Council of California. He is former two-time chairman of the California Judges Association Family Law Committee, a past President of the California Chapter of the Association of Family and Conciliation Courts and is a member of the Judicial Council's Family Law Advisory Committee.

**Judge John Buffington** has been a Superior Court Judge in Humboldt County since 1980. He is the former City Attorney of Arcata and District Attorney for Humboldt County.

**Ann Lynn Chong** is a licensed Clinical Social Worker and a Marriage, Family, and Child Counselor. She has a private practice specializing in incest and abuse and child custody conflicts. She was formerly employed by Child Protective Services and Family Court Services in Sacramento County. She is presently Chair of the Justice Standing Committee of the Sacramento County's Children's Agenda and a member of the Multi-Disciplinary Team of Sacramento County.

**Dr. Mary Duryee** is Director of Family Court Services for Alameda County Superior Court and a licensed psychologist in private practice. She is President of the California Chapter of the Association of Family and Conciliation Courts, and a faculty member of the Wright Institute.

**Judge Leonard Edwards** is a Santa Clara County Superior Court Judge. He has also been a Supervising Judge of Family Court and Presiding Judge of Juvenile Court. He was a member of the Attorney General's Child Victim Advisory Committee.

**James L. Fallon** is a self-employed attorney primarily dealing with family law. He is a member of the American Bar Association's Section of Family Law and the Alameda County Bar Association's Family Law Committee.

**Senator Gary Hart** is chair of the Senate Education Committee. Senator Hart represents the 18th Senate District, which includes portions of Santa Barbara, Ventura, and Los Angeles Counties. In addition to chairing the Senate Education Committee, Senator Hart is the Vice Chair of the Senate Natural Resources Committee, and is a member of the Committees on Budget & Fiscal Review, Energy & Public Utilities, Banking & Commerce, and Constitutional Amendments.

**Judge William Howatt, Jr.** is a San Diego Superior Court Judge who is presently assigned to the Criminal Trial Department but was assigned to the Family Law Court for almost three years and is a former Municipal Court Judge of the El Cajon Judicial District.

**Sheila Kuehl** is an a managing Attorney of the Southern California Women's Law Center. She is presently a member of the Judicial Council Advisory Committee on Gender Bias in the Courts.

**Leonard J. Meyberg, Jr.** is a partner in the law firm of Lichtig, Ellis & Meyberg and is a Certified Family Law Specialist. He is the immediate Past President of the Beverly Hills Bar Association and is the former Chair of this Association's Family Law Section.

**Diane Nunn** is a senior attorney with the Judicial Council, Administrative Office of the Courts and former juvenile court referee and Managing Director of the Permanent Families Project of the Los Angeles Superior Court.

**Judge Lester E. Olson** retired as a Superior Court Judge for the County of Los Angeles in 1985. He is now engaged in a private dispute resolution practice serving as a Judge Pro Tempore, arbitrator, referee and mediator in family dissolution and other matters.

**Carol Ann Peterson** is a legislative advocate for the California Federation of Business and Professional Women and owner of Peterson Consulting. She is on the Board of Directors of the Los Angeles City Commission on the Status of Women.

**Pamela Pierson** is an attorney with Pierson and Toben, specializing in family law. She is a former member and Chair of the State Bar Family Law Section Executive Committee and is presently the President, Northern California Chapter, of the American Academy of Matrimonial Lawyers.

**Judge Arnold Rosenfield** is a Superior Court Judge and the Supervising Judge of the Juvenile Court for the County of Sonoma. He is the former president and a member of the Board of Directors of Social Advocates for Youth and is a member of the Family Services Agency and former President of the Family Information Center, Cotati.

**Sylvia Velez** is an attorney in private practice. She is a former Vice President of La Raza Lawyers Bar Association, Sacramento, and formerly on the Board of Directors of the Hispanic Chamber of Commerce.

**Diane Wasznicky** is a partner in the law firm of Bartholomew & Wasznicky and is a certified family law specialist. She is currently Vice President of the Sacramento County Bar Association and is the immediate past chairperson of the Association's Family Law Section. She has served as chair of the Association's Family Law Section Court Liaison Committee since 1986 and is currently on the Board of California Women Lawyers.

## APPENDIX C

### HEARING IN SACRAMENTO, CALIFORNIA

October 6, 1989

**Charlotte Keeley**, Attorney at Law, C.F.L.S., Auburn

**Kerry Martin**, Program Coordinator, Victim Witness Program, Sacramento

**Joseph Sylvester**, Principal, Mills Junior High School, Rancho Cordova

**John Paulsen**, Attorney at Law, C.F.L.S., Auburn

**Carol Voyles**, Licensed Clinical Social Worker, Child and Family Psycho-therapist, Sacramento

**Assemblywoman Sunny Mojonier**, Republican, 75th District, San Diego

**Justice Arthur Scotland**, Third Appellate court, Sacramento

**Michael Jett**, Chairman of Children's Agenda, Crime Prevention Center, Office of the Attorney General, Sacramento

**Judge J. Richard Couzens**, Placer County Superior Court, Auburn

**Nancy Priddis**

**Anita Branman**, Chief of the Probate Division, Sacramento Superior Court Administration, Sacramento

**Michael Streit**, Chief Mediator Placer County, Sacramento

**Judge Cecily Bond**, Presiding Judge, Sacramento Superior Court, Sacramento

**Phillip Reedy**, Family Court Mediator, Redding

**Professor John Myers**, McGeorge School of Law, University of the Pacific, Sacramento

**James M. Mize**, Attorney at Law, C.F.L.S., Sacramento

**Bruce Kirby**, Mediator, Sacramento

**Joann Johnson**, Clinical Supervisor, Vision Unlimited, Sacramento

**Jerry Plummer**, Assistant Director of Children's Social Services, Sacramento County, Sacramento

**Kathleen Amos**, Attorney at Law, Sacramento

**Detective Ernie Barsotti**, Office of Investigation, Sacramento City Police Department, Sacramento

**Charlita Anderson**, Legal Advocate, Women Escaping a Violent Environment (WEAVE), Sacramento



## **HEARING IN LOS ANGELES, CALIFORNIA**

**October 27, 1989**

**Dr. Robert Beillin**, Ventura Superior Court, Ventura

**Judge Martha Goldin**, Los Angeles Superior Court, Los Angeles

**Pamela Mohr, Esq.**, Director, Children's Rights Project, Public Counsel, Los Angeles

**Sorrell Trope**, Attorney at Law, Los Angeles

**Joan Patsy Ostroy**, Attorney at Law, Los Angeles

**Megan G. Orlando**, Attorney at Law, Los Angeles

**Dr. Karen Saywitz**, Assistant Professor, UCLA School of Medicine, Los Angeles

**Dr. Lionel Margolin**, Medical Director, Reiss-Davis Child Study Center, Los Angeles

**Allen St. John**, President, Parents for Equal Custody

**James Cook**, President, Joint Custody Association

**Judge Donald E. Smallwood**, Superior Court of Orange County, Santa Ana

**Elaine Rosen**, President of the Juvenile Court Bar Association in Los Angeles, Los Angeles

**Joseph Taback**, Attorney at Law, Los Angeles

**Sergeant Beth Dickinson**, Sheriff's Department, Child Abuse Detail, Hall of Justice, Los Angeles

**Hugh McIsaac**, Director, Family Court Services, Los Angeles County Superior Court, Los Angeles

**Judge Kenneth Black**, Los Angeles County Superior Court, Los Angeles

**Hon. Jewel Jones**, Commissioner, Los Angeles County Superior Court, Los Angeles

**Elyse Salinger Kline**, Attorney at Law, Woodland Hills

**Myra Sun**, Harriett Buhai Center for Family Law, Los Angeles

**Patricia Phillips**, Attorney at Law, Los Angeles

## **HEARING AT SAN DIEGO, CALIFORNIA**

**November 20, 1989**

**James Allen**, Family Law Specialists of the San Diego County Bar Association, San Diego

**Kathryn Ashworth**, Attorney at Law, San Diego

**Mark Williams**, Attorney at Law, Children's Advocacy Institute, University of San Diego, San Diego

**Harry Elias**, Chief, Child Abuse Unit, Office of the District Attorney, County of San Diego, San Diego

**Judge Judith McConnell**, Assistant Presiding Judge, San Diego Superior Court, San Diego

**Judge Sheridan Reed**, Superior Court of San Diego County, Juvenile Division, San Diego

**David L. Chadwick**, M.D., Children's Hospital and Health Center, San Diego

## **HEARING AT SAN FRANCISCO, CALIFORNIA**

**December 5, 1989**

**C. Rick Chamberlin**, Richmond & Chamberlin, San Francisco

**Joanne Lederman**, Executive Officer, Alameda County Superior Court, Oakland

**Professor Susan Hanks**, Director, Psychological Services Center, California School of Professional Psychology, Alameda

**Susan Carter**, Project Coordinator, California Court Appointed Special Advocate Association (CASA), San Francisco

**Sandra Beckwith**, Court Appointed Special Advocate, Juvenile Service Center, San Rafael

**Judge Paul Cole**, Santa Clara County Municipal Court, San Jose

**Peter Bull**, Board Member, Coleman Advocates, San Francisco

**George Nielson**, Family Law Section of the State Bar

**Richard Weiskal**

**John Rink**

**Dr. Janet Johnson**, Center for the Family in Transition, Corte Matera

**Judge Daniel Hanlon**, San Francisco Superior Court, San Francisco



## APPENDIX D

### **Proposed Revised Rule 307** (new material underlined)

#### **307. COORDINATION OF CUSTODY PROCEEDINGS.**

##### **Section 1. Policy of the Court.**

(a) The best interests of the child, litigants and court are promoted by early identification and coordination of custody proceedings involving the same child. To that end all departments involved in custody issues shall cooperate to eliminate multiple custody proceedings. Whenever possible such proceedings shall be handled in one department and consolidated for purposes of trial.

(b) The judicial officer before whom the case has been consolidated shall be vested with all the authority possessed by all of the judicial officers in any other department in which the matter was previously set.

(c) It is the policy of the Los Angeles Superior Court that family law and dependency judges shall receive training in both family law and dependency rules, laws and procedures.

##### **Section 2. Standards — To carry out the above policy the following standards are established:**

(a) Custody proceeding. As used herein the term "custody proceeding" is defined to mean one or more of the following custody proceedings:

Custody under the Family Law Act (CC section 4600 et seq.); guardianship (Prob C section 300); juvenile delinquency (WIC section 300); juvenile incorrigibility (WIC section 602); adoption (CC Section 221 et seq.); termination of parental rights (CC section 232 et seq.); emancipation (CC section 60 et seq.); paternity and maternity under the Uniform Parentage Act (CC section 7000 et seq.); writs of habeas corpus and warrants in lieu of habeas corpus (PC sections 1474, 1497); protective orders to prevent domestic violence (CCP section 545 et seq.); and mental health proceedings under the Lanterman-Petris-Short Act (WIC section 5000 et seq.).

(b) Identification. Any court hearing a matter involving the custody of a minor should determine at the earliest possible time if matters are pending in any other department which involve custody of the same minor.

Counsel and parties appearing in proper shall notify any judicial officer before whom they appear in a custody proceeding of any other custody proceeding involving the same child or children. Such notice shall be given at the earliest possible opportunity.

##### **Section 3. Procedures.**

(a) When a judicial officer finds that another custody proceeding is pending that judicial officer shall forthwith notify the supervising judge of the dependency department of the multiple proceedings.

(b) Upon verification of the existence of multiple proceedings the supervising judge shall set a chambers conference regarding possible coordination or consolidation. At least five days notice of said conference (time not extended per CCP 1013) shall be given to all counsel of record in each custody proceeding, to any party appearing in pro per and to any other person or entity at the discretion of the supervising judge.

(c) At said chambers conference the court shall consider such arguments and evidence as the supervising judge deems appropriate.

(d) Following the chambers conference the supervising judge shall consult with all trial judicial officers who are hearing any of the pending proceedings.

(e) Within two weeks after the chambers conference, unless extension is required for good cause as set forth on the record or by minute order by the supervising judge, the court shall issue a minute order either declining to coordinate or consolidate, or coordinating or consolidating and assigning all pending matters to one court.

(f) The supervising judge may hold such other hearings and take such other actions not set forth herein as deemed necessary.

**Section 4. Criteria. In implementing the standards set forth above the court shall/should consider the following:**

(a) How long the case has been active in any particular trial department.

(b) The number and length of hearings that have taken place in such trial department.

(c) The judicial officer's familiarity with the parties and issues in the case.

(d) The stage of proceedings in each court.

(e) Whether there are allegations against both parents or only one.

(f) Whether the dependency petition is detained or nondetained.

(g) The extend to which other family law issues are tied to custody and visitation.

(h) The financial resources of the parties.

(i) The seriousness of the psychological issues raised by the case.

(j) The presence of other children not of the marriage between the parties.

## **APPENDIX E**

### **Santa Clara county Juvenile Court Rule L:**

#### **Juvenile and Family Courts Exchange of Information**

##### **L. Juvenile and Family Courts Exchange of Information:**

This rule addresses the exchange of information between Family Court Services staff (FCS) and Probation Department Juvenile division staff (PD) and the Department of Family and Children's Services staff (DFCS). The disclosure of information concerning children and their parents by one of these agencies is generally prohibited by law. nevertheless, a limited exchange of information about children or parents between these agencies in certain circumstances will serve the best interests of the child who is before the court.

The court hereby finds that the public interest in avoiding duplication of effort by the courts and by the investigative agencies serving the Juvenile and Family Courts and the value of having relevant information gathered by a court agency outweighs the confidentiality interests reflected in Penal Code Sections 11167 and 11167.5 and Welfare and Institutions Code Sections 827 and 10850 et seq., and therefore good cause exists for the following rule:

##### **1. Abuse/Neglect**

FCS staff may orally disclose to PD or DFCS staff who are investigating a suspected child abuse or neglect situation the following information:

- a. Whether the minor has been or is the subject of an FCS custody investigation.
- b. The recommendations made or anticipated to be made to the court by the FCS staff.
- c. The Family Court orders in existence.
- d. Any statements made by the child or the child's parents, guardians or custodians which might bear upon the issue of child abuse or neglect being investigated.

##### **2. Custody Disputes**

PD or DFCS staff may orally disclose to FCS staff who are mediating or investigating a child custody dispute the following information:

- a. Whether the minor is or has been the subject of a child abuse or neglect investigation and the status of that investigation.
- b. The recommendations made or anticipated to be made to the court by the PD or DFCS staff.
- c. Any Juvenile Court orders or petitions in existence which might bear upon the child custody dispute being investigated.
- d. Any statements made by the child, the child's parents, guardians or custodians which might bear upon the child custody dispute being investigated
- e. The details of any report of suspected abuse of the child, except the identify of any original reporting party who has expressed a desire to remain anonymous.

### 3. Conditions

Any disclosure authorized by this order shall be subject to the following conditions:

- a. The agency receiving the request shall first establish to its satisfaction that the inquiring party is in fact a member of an agency designated above.
- b. All information shall be provided orally.
- c. If an agency desires written documentation, it shall make written application for a court order releasing that documentation.
- d. The information gathered shall be used exclusively in the investigation being conducted and the subsequent court proceedings, and shall not be repeated to anyone not a party of those proceedings without court order.

Nothing in this order is intended to limit any disclosure of information by any agency which is otherwise required or permitted by law or by other court orders.

## APPENDIX F

### **Memorandum of Understanding for the Special Multi-discipline Assessment and Referral Team**

#### **I. PARTIES:**

This agreement, establishing the SPECIAL MULTI-DISCIPLINE ASSESSMENT AND REFERRAL TEAM (S.M.A.R.T.), is entered into between the Placer County Probation and Welfare Departments, the Mental Health Division of the Health Department and the Placer County Superior Court.

#### **II. PURPOSE:**

- A. SMART is being created (1) to encourage and direct families to use their own or private resources in the resolution of family problems; (2) to effectively assist in solving the problems of children who are in trouble with themselves, the schools, law enforcement agencies, or social agencies; (3) to intercede in the chain of events which often lead children into the court system; and (4) to identify community needs to assist problem youngsters where programs or services are not currently available, but probably needed.
- B. SMART is not created to solve routine departmental case problems. Referrals generally will be made for children with complex personal, family or social problems who are or may be involved with several service or enforcement agencies. The typical referral will concern the child with multiple problems; for example, school, family, peer, emotional/behavioral or legal problems where the solution to the problem is being the scope of a single agency and will require multi-discipline consideration.
- C. The participating departments agree that they will abide by the decision of SMART in directing referrals of cases for management and disposition.
- D. The participating departments agree to morally support the representatives to SMART such that department politics will not eliminate the free participation of a representative during the deliberation of team issues.
- E. All materials and information received by SMART shall be confidential and shall not be disclosed to any person or entity except as authorized by law or by Rule 50.1 of the Local Rules of the Placer County Superior Court.



### **III. ORGANIZATIONAL STRUCTURE:**

SMART shall consist of a Resource Team and an Assessment and Referral Team.

### **IV. RESOURCE TEAM:**

- A. Composition: The Resource Team shall consist of the department heads of the Placer County Probation and Welfare Departments, the director of the Mental Health Division of the Health Departments, and the Placer County Juvenile Court Judge.
- B. Duties: The Resource Team shall:
  - 1. Establish policy for implementing the objectives of SMART, including policies, standards and procedures for screening, reviewing and resolving cases referred to SMART.
  - 2. Render full support to the departmental representative on SMART as a priority responsibility.
  - 3. Appoint a Facilitator who, in addition to other duties, shall record actions of the Resource Team.
  - 4. Establish appropriate in-service training regarding SMART referrals.
  - 5. Establish appropriate meetings for the Resource and Assessment and Referral Team.
  - 6. Consider financial needs of SMART and establish a budget based on available funding.
  - 7. Resolve interdepartmental case management problems not resolved by the Assessment and Referral Team.
  - 8. Dedicate staff and departmental resources appropriate to the proper operation of SMART, including any clerical needs.
  - 9. Develop appropriate procedures for the efficient gathering and exchange of case information between participating departments, through SMART.
  - 10. Establish an appropriate means of case tracking to assure that directives of SMART have been met.
  - 11. The Juvenile Court Judge member of the Resource Team shall not hear any discussion nor participate in any decisions regarding specific cases referred to SMART, but shall only participate in policy discussions and decisions.

- C. Quorum: Decisions by the Resource Team shall be made by majority vote, with at least three members of the Resources Team eligible to vote being in attendance.

**V. ASSESSMENT AND REFERRAL TEAM:**

- A. Composition: The Assessment and Referral Team shall be composed of the Facilitator and representatives appointed by each of the department heads from the Probation and Welfare Departments and the Director of the Mental Health Division of the Health Department.
- B. Duties: The Assessment and Referral Team shall:
1. Receive referrals from the participating departments,
  2. Review case histories, deliberate the proper allocation of resources and to assign cases to a lead agency for management and disposition.
  3. Establish and maintain a current list of all available public and private youth services and resources.
- C. Operational Outline:
1. The Assessment and Referral Team shall designate a lead agency for each case for general case management and may assign any specific case responsibilities to other appropriate agencies and/or persons, including the child's family or other private resources.
  2. The Facilitator shall act as chairperson of the meetings; shall record actions taken by the Assessment and Referral Team; shall be able to call special meetings of the team; and shall act as liaison with the Resource Team, reporting to the Resource Team as directed.
  3. The Assessment and Referral Team shall meet at least once a week at a regularly scheduled meeting and shall meet as directed by the Facilitator for emergency situations.
  4. The Assessment and Referral Team may required the appearance of and participation by parents and other persons employed by the participating departments and may request the appearance of and participation by private agencies or individuals.
  5. The designated member of the Assessment and Referral Team shall act as the source of referrals from other individuals in the member's department and any other source. The member shall initially screen potential referrals for appropriateness and to assure completion of the referring material.

6. The Assessment and Referral Team may refer any case back to the department of origin for further action deemed appropriate.
7. Decisions of the Assessment and Referral Team shall be made by majority vote, with at least three of the members of the team in attendance.
8. In the event of an unresolved dispute in the resolution of a case, the Facilitator shall promptly refer the case, and all case materials, to the Resource Team for final resolution.
9. Appeal from decisions of the Assessment and Referral Team may be made to the Resource Team by any Resource Team member.